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## Advisory Opinion to the Attorney General: Tobacco

SC05-1897 | SC05-2098

CHIEF JUSTICE: GOOD MORNING, LADIES AND GENTLEMEN, AND WELCOME TO THE FLORIDA SUPREME COURT.

THE FIRST CASE THIS MORNING IS THE ADVISORY OPINION TO THE ATTORNEY GENERAL, AND AS I UNDERSTAND THE PARTIES HAVE REQUESTED TEN MINUTES TO EXPLAIN YOUR POSITION.

THAT'S CORRECT.

LOUIS HUBENER

WITH THE OFFICE OF THE ATTORNEY GENERAL.

THERE IS NO OPPOSITION TO THIS AMENDMENT.

MR. STEPHEN GRIMES WILL ARGUE.

CHIEF JUSTICE: ALL RIGHT.

THESE ARE ALWAYS THE TOUGHEST CASES, WHEN YOU HAVE NO OPPOSITION.

MAY IT PLEASE THE COURT.

I AM STEPHEN GRIMES, ALONG WITH SUSAN KELSEY, REPRESENTING THE AMERICAN CANCER SOCIETY AND AMERICAN HEART ASSOCIATION AND THE AMERICAN LUNG ASSOCIATION, WHO ARE THE SPONSORS OF THIS PETITION.

WHEN THE TOBACCO SETTLEMENT WAS ENTERED INTO BY THE STATE

ORIGINALLY, A PRETTY SUBSTANTIAL AMOUNT OF MONEY FROM THOSE PAYMENTS WAS USED FOR A PROGRAM TO EDUCATE THE PUBLIC, PARTICULARLY THE YOUTH, AGAINST THE USE OF TOBACCO.

IN FACT, THE ORIGINAL SETTLEMENT AGREEMENT REQUIRED SOME MONEY TO BE USED FOR THAT PURPOSE, BUT AS TIME PASSED, THE AMOUNT DWINDLED AND LAST

YEAR IT WAS DOWN TO ABOUT A MILLION DOLLARS, AND THAT WAS THE REASON FOR THIS PETITION.

THE CHIEF PURPOSE --

JUSTICE: WHAT WAS THE AMOUNT AT THE INCEPTION?

HOW MUCH WAS BEING SPENT ON THIS EDUCATION CAMPAIGN?

ORIGINALLY, THIS IS, AS I UNDERSTAND, AROUND \$45 MILLION, ORIGINALLY, I THINK WAS SPENT FROM THE EARLY TOBACCO SETTLEMENT.

SO YOUR PETITION WOULD REQUIRE AT LEAST 15 PERCENT OF THAT AMOUNT TO NOW BE SPENT ON EDUCATION?

15 PERCENT OF THE CURRENT.

IT IS TIED TO THE PAYMENT THAT WAS MADE, I THINK, LAST YEAR.

YOU MEAN 15 PERCENT OF THE TOTAL AMOUNT OF THE PAYMENT THAT THE STATE GETS FROM THE TOBACCO COMPANIES.

YES.

YES.

THAT'S RIGHT.

YES.

AND THE PURPOSE OF THAT IS TOBACCO EDUCATION, AS I MENTIONED, A PROGRAM DIRECTED DIRECTLY TOWARD YOU.

THAT IS THE CHIEF PURPOSE AND THE ONLY PURPOSE.

CHIEF JUSTICE: MR. GRIMES, I THINK THAT IT CERTAINLY SEEMS AS IF FOR A SINGLE SUBJECT, THAT IT MEETS THAT REQUIREMENT.

THE ONLY QUESTION THAT I WOULD HAVE IS JUST TO MAKE SURE THAT YOU EXPLAIN HOW TYING IT INTO 15 PERCENT, HOW THIS IS DISSIMILAR TO THE ADVISORY OPINION ON THE REQUIREMENT FOR ADEQUATE PUBLIC EDUCATION, WHICH HAD THE 40 PERCENT.

YES, MA'AM.

THE --

CHIEF JUSTICE: AND THAT WAS STRUCK DOWN BY THE COURT.

YES.

THE REASON THAT WAS STRUCK DOWN, IT TIED, ONE, THE 40

PERCENT, THE FIGURE THAT THE 40 PERCENT WAS DIRECTED TOWARD WAS DIRECTED TOWARD 40 PERCENT OF THE WHOLE BUDGET, AND AS THE COURT WOULD EXPLAIN, UNDER THOSE CIRCUMSTANCES AND I THINK THE REASON IT WAS STRUCK DOWN, WAS THAT THEORY THAT YOU CAN'T IMPACT, MAKE A SUBSTANTIAL IMPACT OVER MORE THAN ON BRANCH OF GOVERNMENT, AND THEY SAID THAT BY TAKING 40 PERCENT OUT OF THE BUDGET AND THE BUDGET VARIES EVERY YEAR, IT COULD NOT HELP BUT HAVE A SUBSTANTIAL IMPACT ON ALL THREE BRANCHES OF GOVERNMENT.

HERE IT IS TIED TO THESE SPECIFIC PAYMENTS.

IT DOESN'T AFFECT ALL, THE JUDICIAL AND THE EXECUTIVE BRANCHES.

IT HAS A MINIMAL EFFECT, I GUESS, ON THE LEGISLATIVE BRANCH, BUT WITH RESPECT TO IT IS MINIMAL, IN THE SENSE THAT WE ARE TALKING ABOUT 15 PERCENT OF JUST TOBACCO PAYMENTS.

WE ARE NOT TALKING ABOUT THE WHOLE BUDGET.

AND IT SEEMS TO ME IT IS ENTIRELY DIFFERENT.

WE HAVE DISCUSSED THAT IN MORE DETAIL IN THE BRIEF, BECAUSE WE RECOGNIZE THAT THAT MIGHT BE A QUESTION, BUT I THINK IT IS CLEARLY DISTINGUISHABLE ON THAT BASIS.

MR. GRIMES THERE, IS ONE ASPECT OF THIS AMENDMENT THAT APPEARS TO BE A SELF-AMENDING PROVISION, AND THAT IS THAT IT IS, IT MAY CHANGE, BASED UPON THE CDC AND WHAT PROGRAMS THEY MAY CHANGE.

DO WE HAVE ANY OTHER CONSTITUTIONAL TYPE OF PROVISION THAT IS CONTAIN ANY TYPE OF SIMILAR AMENDING PROCESS, AND IS THAT A CONCERN, OR SHOULD IT BE A CONCERN, SOMETHING THAT WE THRUST INTO OUR CONSTITUTIONAL PROVISIONS, THINK THAT THIS WILL

AUTOMATICALLY AMEND ITSELF,  
BECAUSE WE DON'T KNOW WHAT  
THOSE WILL BE DOWN THE ROAD,  
AND WHAT ARE YOUR THOUGHTS ON  
THAT?

WELL, IT SEEMS TO ME THE  
PURPOSE OF THIS AMENDMENT IS  
SIMPLY TO PROVIDE FOR TOBACCO  
EDUCATION PROGRAMS.

IT IS TIED TO USING THE CDC  
STANDARDS AND SUCH.

IT SEEMS TO ME IT IS MORE  
DESIRABLE, BECAUSE AS TIME GOES  
ON, PEOPLE LEARN MORE ABOUT THE  
EFFECT OF TOBACCO ON HEALTH,  
AND THE CDC KEEPS DOING  
RESEARCH ON THIS, AND THE  
PROGRAM, THEN, IS FLEXIBLE  
ENOUGH TO MEET THE EMERGING  
BETTER RESEARCH AND DIRECTED  
TOWARD IT.

THE CONSTITUTION IS JUST A  
FRAMEWORK.

THE MONEY THAT IS TIED, IS  
THERE WILL BE NO QUESTION HOW  
MUCH MONEY WE ARE TALKING  
ABOUT, BECAUSE OF THE  
PERCENTAGE OF THESE PAYMENTS,  
AND OF COURSE THE LEGISLATURE  
WILL HAVE TO IMPLEMENT THE  
PROGRAM.

IT IS CONTEMPLATED THAT THAT  
WOULD BE TRUE, BUT THIS IS JUST  
A FRAMEWORK, AND IF YOU TIED IT  
TO SOMETHING RIGHT NOW AND NEW  
RESEARCH DEVELOPED THAT THERE  
IS NEW WAYS TO, AND NEW  
EDUCATIONAL REQUIREMENTS AND  
SUCH THAT AS THAT THAT WOULD BE  
MORE HELPFUL, IT WOULD BE  
COUNTERPRODUCTIVE, BUT I DON'T  
THINK THAT AFFECTS WHAT YOU PUT  
IN THE CONSTITUTION.

IT APPEARS TO ME THAT THAT  
WOULD NOT BE A PROBLEM.

WE HAVE GONE OVER THIS IN THE  
BRIEF.

IT, THERE IS NO LOG ROLLING  
INVOLVED.

THE, IT DOESN'T AFFECT OTHER  
CONSTITUTIONAL PROVISIONS,  
WHERE WE HAVE TO POINT THEM OUT  
ON.

AS I MENTIONED, IT DOES NOT

AFFECT THE OTHER TWO BRANCHES OF GOVERNMENT AND ONLY THE LEGISLATIVE BRANCH IN A MINIMAL WAY.

THE BALLOT SUMMARY, I THINK, IS VERY STRAIGHTFORWARD.

WE PUT AS MUCH DETAIL AS WE COULD, WITHIN 75 WORDS, AND I SUBMIT THAT, AND, OF COURSE, AS THE COURT KNOWS AND AS THE COURT HAS SAID MANY TIMES, THAT THE COURT IS OBLIGATED TO APPROVE THESE AMENDMENTS, UNLESS THEY ARE CLEARLY AND CONCLUSIVELY DEFECTIVE, AND WE SUBMIT THAT IT IS NOT EVEN CLOSE IN THIS RESPECT.

CHIEF JUSTICE: YOU DO NOT, THE FINANCIAL IMPACT STATEMENT WAS FILED, AND YOU DON'T QUARREL WITH THAT.

WE DID NOT CHALLENGE THAT, YES, SO IF THE COURT HAS NO OTHER QUESTIONS, I WOULD REMIND THE COURT FOR WHAT IT IS WORTH, THAT THERE IS A NEW CONSTITUTIONAL PROVISION IN THERE NOW, THAT SAYS THAT IF YOU WANT TO GET ON THE BALLOT IN A GIVEN YEAR, THAT THE SUPREME COURT OPINION APPROVING ALLOWING IT TO BE ON THE BALLOT ON, HAS TO BE RENDERED BY APRIL 1 OF THAT YEAR.

NOW, WE HAVE THE VOTES. WE HAVE THE SIGNATURES. AND WE WANT TO BE ON THE BALLOT THIS YEAR.

BUT IN THE EVENT THE COURT WERE TO SEE FIT TO APPROVE IT THIS, WE WOULD RESPECTFULLY REQUEST THAT THE COURT RENDER ITS WRITTEN OPINION BY APRIL 1.

OTHERWISE THE CONSTITUTION WOULD PREVENT US FROM BEING ON THE BALLOT THIS YEAR.

CHIEF JUSTICE: THANK YOU.

THANK YOU VERY MUCH.

CHIEF JUSTICE: ALL RIGHT.